

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3873 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

NARSI PARSHOTTAM GOLARANA

Versus

DISTRICT MAGISTRATE

Appearance:

Mr. N.M. Kapadia for MS DR KACHHAVAH for Petitioner
Mr. Nigam Shukla, learned Asst.G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/11/96

ORAL JUDGMENT :

1. This Special Civil Application is directed against the detention order dated 28-4-96 passed by the District Magistrate, Jamnagar whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 29-4-96 and since then the

petitioner is under detention lodged at Junagadh District Jail, Junagadh.

2. The present Special Civil Application was filed in this court on 4-6-96 and on 5-6-96 Rule returnable on 24-6-96 was issued. So far neither any reply has been filed on behalf of the respondents nor any affidavit of the detaining authority has been filed.

3. The grounds enclosed with the detention order show that as many as 6 criminal cases under the Bombay Prohibition Act were registered against the petitioner in Jamnagar City 'A' Division during the years 1995-96 and in all these matters the police investigation was going on at the time when the detention order was passed. After taking note of the aforesaid criminal cases against the petitioner, the detaining authority has expressed that the petitioner is a head strong person and the people were not prepared to report against the petitioner out of his fear and, therefore, for the reasons of security while withholding the identity of the 3 witnesses under S.9(2) of the Act, the statements of 3 witnesses made on 10-4-96 and 11-4-96 have been considered. The petitioner has been found to be engaged in the business of unauthorised liquor and engaged in anti social activities. The detaining authority has held that the petitioner is a bootlegger and it was necessary to pass the detention order against him in order to prevent him from continuing with his anti social activities. Accordingly the detention order was passed.

4. The detention order has been challenged on more than one grounds. But the learned counsel for the petitioner has kept his arguments confined to the question that even if the allegations and materials against the petitioner are taken to be correct on its face value, it can not be said that a case of breach of public order is made out. At the most it is a case of breach of law and order.

5. For the reasons given in the judgment dated 4-10-96 in Special Civil Application No.3879/96 it is found that the allegations and materials, on the basis of which the detention order has been passed, do not constitute a case of breach of public order and it is at the most a case of breach of law and order. The detention order, therefore, can not be sustained in the eye of law.

6. Accordingly this Special Civil Application is allowed and the impugned detention order dated 28-4-96

passed by the District Magistrate, Jamnagar is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.